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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LAWRENCE E. LYLES, ANDREW M. KRIEBEL,
DAVID BARNHURST, GREG DIMAGGIO, STEPHEN PHILLIPS,
JERRARD CURTIS, AIMEE WORLEY, and VINCENT YEN

Appeal 2009-007306
Application 10/729,403¹
Technology Center 2400

Before JEAN R. HOMERE, ST. JOHN COURTENAY III, and
DEBRA K. STEPHENS, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL²

¹ Filed on December 5, 2003. The real party in interest is AT&T Intellectual Property I, L.P. (Br. 2.)

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) (2002) from the Examiner's final rejection of claims 1 through 24. (Br. 2.) We have jurisdiction under 35 U.S.C. § 6(b) (2008).

We affirm.

Appellants' Invention

Appellants invented a system, method and computer readable medium for assigning equipment in a telecommunication network. (Spec. 2, ll. 4-5.)

Illustrative Claim

Independent claim 1 further illustrates the invention as follows:

1. A telecommunications telemetry assignment system, comprising:

assignment logic operable to assign a plurality of telecommunications telemetry equipment and ports to a plurality of network elements, wherein telemetry of a network element is tracked by a telecommunication telemetry equipment that is assigned to the network element;

collection logic operable to receive assignments from the assignment logic and store the assignments in a database; and

graphical user interface logic operable to retrieve assignments from the database, and to display the assignments to a user in a graphical format using a web interface which includes displaying the telecommunications telemetry equipment in a graphical format substantially similar to a physical construction of the telecommunications telemetry equipment.

Prior Art Relied Upon

The Examiner relies on the following prior art as evidence of unpatentability:

Edwards	5,590,360	Dec. 31, 1996
Wickham	6,307,546 B1	Oct. 23, 2001
Kidder	6,445,774 B1	Sep. 3, 2002
Zimmer	2003/0051226 A1	Mar. 13, 2003
Reynolds	2003/0126195 A1	Jul. 3, 2003
Jain	2003/0224339 A1	Dec. 4, 2003
Song	6,742,018 B1	May 25, 2004 (filed Jan. 5, 2000)
Goodwin, III	6,970,851 B1	Nov. 29, 2005 (filed Sep. 28, 2001)

BellSouth Telecommunications Assignment System User Documentation (Unpublished User Guide) (hereinafter “BTAS”).

Rejections on Appeal

The Examiner rejects the claims on appeal as follows:

Claims 1 through 3, 5 through 7, 9, 11, 13 through 15, 17, 19, and 21 through 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of BTAS and Reynolds.

Claims 1 through 3, 6, 7, 9, 11, 13 through 15, 17, 19, and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Wickham and Reynolds.

Claims 4, 12, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of BTAS, Reynolds, and Jain.

Claims 4, 12, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Wickham, Reynolds, and Goodwin, III.

Claims 8, 16, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Wickham, Reynolds, and Edwards.

Claims 10 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of BTAS, Reynolds, and Song.

Claims 10 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Wickham, Reynolds, and Zimmer.

Claims 22 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Wickham, Reynolds, and Kidder.

Appellants' Contentions

1. Appellants contend that Reynolds discloses creating web interfaces in order to allow an administrator to remotely control network devices through web pages. (Br. 8.) In particular, Appellants argue that Reynolds' disclosure of a user logging into a Network/Element Management System (hereinafter "NMS") client utilizing an interface and issuing commands to network devices, does not teach a web graphical interface that allows for assignments of telecommunication telemetry equipment and displaying of such equipment in a graphical format substantially similar to a physical construction of the equipment. (*Id.* at 8-9.)

2. Appellants allege that Wickham discloses a personal computer-based interface product programmed with Snailtalk object-oriented language. (*Id.* at 15.) Appellants also contend that each of Wickham's Litespan terminals has common control (hereinafter "CC") banks and accesses multiplexers, including both fiber banks and channels banks. (*Id.*) Therefore, Appellants argue that Wickham does not teach a computer that can retrieve the assignments utilizing a web interface. (*Id.*) As such, Appellants allege that Wickham fails to teach the "graphical user interface logic," as recited in independent claim 1. (*Id.*)

Examiner's Findings and Conclusions

1. The Examiner finds that Reynolds' disclosure was only cited to teach "a graphical format [displayed] using a web interface," as recited in

independent claim 1. (Ans. 17.) The Examiner finds that BTAS' disclosure was cited to teach the remaining limitations in independent claim 1. (*Id.*) Therefore, the Examiner finds that Appellants failed to address the disclosures in BTAS cited by the Examiner in the rejection. (*Id.* at 17-18.)

2. The Examiner finds that Appellants only focus on a portion of Wickham's disclosure that was not cited by the Examiner. (*Id.* at 18.) Further, the Examiner reiterates that Reynolds' disclosure was only cited to teach "a graphical format [displayed] using a web interface," as recited in independent claim 1. (*Id.* at 18-19.) Therefore, the Examiner finds that Appellants failed to address the disclosures in Wickham relied upon in the rejection. (*Id.*)

II. ISSUES

1. Have Appellants shown that the Examiner erred in concluding that the combination of BTAS and Reynolds renders independent claim 1 unpatentable? In particular, the issue turns on whether the proffered combination teaches or suggests "graphical user interface logic operable to retrieve assignments from the database, and to display the assignments to a user in a graphical format using a web interface which includes displaying the telecommunications telemetry equipment in a graphical format substantially similar to a physical construction of the telecommunications telemetry equipment," as recited in independent claim 1.

2. Have Appellants shown that the Examiner erred in concluding that the combination of Wickham and Reynolds renders independent claim 1 unpatentable? In particular, the issue turns on whether the proffered combination also teaches or suggests the disputed limitation.

III. FINDINGS OF FACT

The following Findings of Fact (hereinafter “FF”) are shown by a preponderance of the evidence.

BTAS

1. BTAS discloses developing an application in order to “improve the cost performance and accuracy of provisioning telemetry equipment, tracking available telemetry capacity, *making telemetry assignments for network elements*, and reporting on telemetry assignment activity.” (1: ll. 1-3) (emphasis added.)

2. BTAS discloses that the application is capable of being installed on a personal computer (hereinafter “PC”) and appearing on Windows Desktop. (2: 1. 1 & 23.)

3. BTAS depicts two screen shots. (6.) In particular, BTAS discloses that each screen shot contains a menu bar, which includes a “Reports” option. (*Id.* at l. 1.) BTAS discloses that the “assignment” tab under the “Reports” option contains a list, or pull down menu, of available capacity and assignment information for a selected telemetry device type. (*Id.* at ll. 1-2.)

4. BTAS depicts two additional screen shots. (9.) In particular, BTAS discloses that a user can display a graphical representation of a selected AI-180 shelf that shows both existing plug-ins and vacant slots. (*Id.* at ll. 1-2.)

Reynolds

5. Reynolds discloses a common command interface (hereinafter “CCI”) that utilizes command code, thereby enabling applications to be shared across multiple command interfaces. (Abst.)

6. Reynolds discloses a web interface that allows administrators to remotely control network devices through web pages. (1: ¶ [0002].) Reynolds discloses that web interfaces generally provide a user with easy access and a more visually rich format through Hypertext Markup Language (hereinafter “HTML”). (*Id.*)

Wickham

7. Wickham discloses “a craft interface device for accessing, maintaining, and provisioning a telecommunications network.” (Col. 2, ll. 44-46.)

8. Wickham’s figure 7 depicts a graphical user interface (64) that displays a screen on a monitor (70). (Col. 11, ll. 9-10.) Wickham discloses that the screen displays an equipment and facilities pane (108) that shows graphic representations of internal structural components of a selected node or terminal. (*Id.* at ll. 11-14.) Further, Wickham discloses that the graphic representations on the screen include a common control assembly (hereinafter “CCA”) icon (110). (*Id.* at ll. 14-15.)

9. Wickham’s figure 8 depicts representative substructures of the CCA. (*Id.* at ll. 28-29.) In particular, Wickham discloses that the CCA window includes an equipment pane (118), which shows graphical representations corresponding to assigned equipment retrieved from the CC bank (28). (*Id.* at ll. 29-33.)

IV. ANALYSIS

Claim 1

Independent claim 1 recites, in relevant part:

graphical user interface logic operable to retrieve assignments from the database, and to display the assignments to a user in a graphical format using a web interface which includes displaying the telecommunications telemetry equipment in a graphical format substantially similar to a physical construction of the telecommunications telemetry equipment.

35 U.S.C. §103(a)—Combination of BTAS and Reynolds

As detailed in the Findings of Fact section above, BTAS discloses an application that assigns telemetry equipment to elements in a network. (FF 1.) In particular, BTAS discloses installing the application on a PC and running the application on Windows Desktop. (FF 2.) Further, BTAS discloses screen shots that contain a menu bar. (FF 3.) Upon selecting the “assignment” tab under the “Reports” options in the menu bar, BTAS discloses displaying a pull down menu of available capacity and assignment information for a selected telemetry device. (*Id.*) We find that BTAS’ disclosure teaches a PC that retrieves assignments of telemetry devices and displays the assignments on a graphical user interface (hereinafter “GUI”). In particular, we find that an ordinarily skilled artisan would have appreciated that BTAS’ PC works in conjunction with a database to perform the functions of assigning and displaying.

Further, Reynolds discloses a CCI that enables applications to be shared across multiple command interfaces. (FF 5.) In particular, Reynolds discloses a web interface that allows administrators to remotely control

network devices though web pages. (FF 6.) We agree with the Examiner that Reynolds' disclosure teaches a web interface. (Ans. 17-18.)

Next, we consider the scope and meaning of the phrase "displaying the telecommunications telemetry equipment in a graphical format substantially similar to a physical construction of the telecommunications telemetry equipment," which must be given the broadest reasonable interpretation consistent with Appellants' disclosure, as explained in *In re Morris*, 127 F.3d 1048 (Fed. Cir. 1997):

[T]he PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification.

Id. at 1054. *See also Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989) (stating that "claims must be interpreted as broadly as their terms reasonably allow.")

Appellants' Specification states that:

upon selecting the "Add Capacity" menu representation 215, a [pull down] menu representation will appear with "Assign" selection representations 320. The "Add Capacity" selection representations 320 can include, among others: an "AI 130 Switch" selection, and "AI 180 Switch" selection, a "COWAN" selection, a "Dantel (Auto)" selection, a "Dantel (Manual)" selection, a "Dantel (from Assignments)" selection, a "Misc. E2A/Serial" selection, and a "Patch Panel" selection. Each of the selections represent alarm collection devices that can be added to the telemetry system to increase capacity.

(Spec. 18, ll. 1-8.)

Further, Appellants' Specification states that "the graphical representation 1005 is configured substantially similar to the physical layout of the Cisco 3662 router...". (*Id.* at 28, ll. 22-24.)

Our reviewing court states, “the ‘ordinary meaning’ of a claim term is its meaning to the ordinary artisan after reading the entire patent.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1321 (Fed. Cir. 2005).

Upon reviewing Appellants’ Specification for *context*, we conclude that the claimed phrase “displaying the telecommunications telemetry equipment in a graphical format substantially similar to a physical construction of the telecommunications telemetry equipment” may be broadly, but reasonably construed as displaying a graphical representation of a telemetry device, such as an AI Switch, COWAN, Dantel, Patch Panel, or router.

BTAS discloses that a user can display a graphical representation of an AI-180 shelf, which includes both existing plug-ins and vacant slots. (FF 4.) Therefore, consistent with our claim construction above, we find that BTAS’ disclosure teaches displaying a graphical representation of an AI switch. In summary, we find that an ordinarily skilled artisan would have readily appreciated that BTAS’ PC works in conjunction with a database to retrieve assignments of telemetry devices and utilizes Reynolds’ web interface to display assignments, such as a graphical representation of an AI switch, via a GUI. Thus, we find that the combination of BTAS and Reynolds teaches or fairly suggests the disputed limitation.

Alternatively, we note that the disputed claim limitation only requires “graphical user interface logic *operable to* retrieve assignments from the database, and to display the assignments to a user in a graphical format using a web interface...”. (Claims App’x) (emphasis added.) We find that this recitation merely requires that the graphical user interface logic be capable of performing the recited functions of retrieving and displaying. Such

recitation does not require, however, that the graphical user interface logic actually perform the recited functions of retrieving and displaying. This recitation is a statement of intended use, which is fully met by a prior art structure that is capable of performing the recited functions. A statement of intended use in an apparatus claim cannot distinguish over a prior art apparatus that discloses all the recited limitations and is capable of performing the recited function. *See In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). We note that “[a]n intended use or purpose usually will not limit the scope of the claim because such statements usually do no more than define a context in which the invention operates.” *Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp.*, 320 F.3d 1339, 1345 (Fed. Cir. 2003). Although “[s]uch statements often ... appear in the claim's preamble,” *In re Stencel*, 828 F.2d 751, 754 (Fed. Cir. 1987), a statement of intended use or purpose can appear elsewhere in a claim. *Id.* We are therefore satisfied that the proffered combination teaches or suggests an equivalent structure that is capable utilizing graphical user interface logic to performing the recited functions of retrieving and displaying. (FFs 1-6.) It follows that Appellants have not shown that the Examiner erred in concluding that the combination of BTAS and Reynolds renders independent claim 1 unpatentable.

35 U.S.C. § 103(a)—Combination of Wickham and Reynolds

As detailed in the Findings of Fact section above, Wickham discloses an interface device that is capable of accessing, maintaining, and provisioning a telecommunications network. (FF 7.) In particular, Wickham discloses a GUI that displays an equipment and facilities pane which shows graphic representations of internal structural components of a

selected node or terminal, including a CCA. (FF 8.) Further, Wickham discloses that the CCA window includes an equipment pane that shows graphical representations corresponding to assigned equipment retrieved from a common control bank. (FF 9.)

We find that Wickham's disclosure teaches a GUI that retrieves graphical representations of assigned equipment from a common control bank and displays such assignments to a user. In particular, we find that an ordinarily skilled artisan would have understood that Wickham's disclosure of retrieving graphical representations of assigned equipment from a common control bank amounts to retrieving assignments of telemetry equipment from a database. In summary, we find that an ordinarily skilled artisan would have readily appreciated that Wickham's GUI works in conjunction with a database to retrieve graphical representations of assigned telemetry equipment and utilizes Reynolds' web interface to display such assignments to a user. Thus, we find that the combination of Wickham and Reynolds also teaches or fairly suggests the disputed limitation.

Alternatively, Appellants' argument is not commensurate in scope with the claim language because the cited capability of the graphical user interface logic is a statement of intended use, which is not entitled to any patentable weight. *See Schreiber*, 128 F.3d at 1477. It follows that Appellants have not shown that the Examiner erred in concluding that the combination of Wickham and Reynolds renders independent claim 1 unpatentable.

Claims 2 through 24

Appellants do not provide separate arguments for patentability with respect to independent claims 9 and 17, and dependent claims 2 through 8,

10 through 16, and 18 through 24. Therefore, we select independent claim 1 as representative of the cited claims. Consequently, Appellants have not shown error in the Examiner's rejection of independent claims 9 and 17, and dependent claims 2 through 8, 10 through 16, and 18 through 24, for the reasons set forth in our discussion of independent claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii).

V. CONCLUSION OF LAW

Appellants have not shown that the Examiner erred in rejecting claims 1 through 24 as being unpatentable under 35 U.S.C. § 103(a).

VI. DECISION

We affirm the Examiner's decision rejecting claims 1 through 24 as being unpatentable under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

Vsh

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